



DEPARTMENT OF MANAGEMENT
SERVICES

Governor Charlie Crist
Secretary Linda H. South

Division of State Purchasing
4050 Esplanade Way, Suite 360
Tallahassee, Florida 32399-0950

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<http://dms.myflorida.com>

Suite 315

CERTIFICATION OF CONTRACT

TITLE: Energy Savings

CONTRACT NO.: 973-320-08-1

ITN NO.: 24-973-320-X

EFFECTIVE: See Contract Paragraph 1.03, Term, and 2.36, Effective Date

SUPERSEDES: 973-320-03-1

CONTRACTOR(S): Trane U.S., Inc.
FPL Services, LLC
BGA, Inc.
Energy Systems Group, LLC
TAC Americas, Inc.
Johnson Controls, Inc.
Siemens Building Technologies, Inc.
Honeywell Building Solutions
Chevron Energy Solutions
Ameresco, Inc.

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- A. AUTHORITY – Upon affirmative action taken by the State of Florida Department of Management Services, a contract has been executed between the State of Florida and the designated contractors.
- B. EFFECT – This contract was entered into to provide economies in Energy Savings by all State of Florida agencies and institutions. Therefore, in compliance with Section 287.042, Florida Statutes, all purchases of these commodities shall be made under the terms, prices, and conditions of this contract and with the suppliers specified.
- C. ORDERING INSTRUCTIONS – All purchase orders shall be issued in accordance with the attached ordering instructions. Purchaser shall order at the prices indicated, exclusive of all Federal, State and local taxes.

All contract purchase orders shall show the State Purchasing contract number, product number, quantity, description of item, with unit prices extended and purchase order totaled. (This requirement may be waived when purchase is made by a blanket purchase order.)

- D. CONTRACTOR PERFORMANCE – Agencies shall report any vendor failure to perform according to the requirements of this contract on Complaint to Vendor, form PUR7017. Should the vendor fail to correct the problem within a prescribed period of time, then form PUR7029, Request for Assistance, is to be filed with this office.
- E. SPECIAL AND GENERAL CONDITIONS – Special and general conditions are enclosed for your information. Any restrictions accepted from the supplier are noted on the ordering instructions.



12/20/07

Authorized Signature

(date)

DSP/db/jdb

Attachments



State Term Contract for Energy Savings

No. 973-320-08-1

Contract Term: Five Years with Five Year Renewal Option

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SECTION 1.0

INTRODUCTION

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1.1 Introduction and Overview:

The State of Florida ("State") is issuing this Invitation to Negotiate ("ITN") to obtain Responses from potential Contractors for the provisioning of Energy Savings Contracting, as more fully described in Section 6.0 of this ITN. Any resulting contract from this ITN will supersede and replace the current Comprehensive Energy Strategy Contract (No. 973-320-03-1).

1.2 Timeline:

Event	Event Date
Issue ITN	3/26/2007
Questions from Respondents Due (No later than 2:00 pm ET)	4/04/2007
Post Responses to Respondent's Questions	4/11/2007
ITN Responses Due (No later than 2:00 pm ET) Responses Will be Opened @ 2:00 pm ET in Building 4050 Rm. 360K	4/24/2007
Evaluators Review ITN Responses / Evaluators Scoring Session	4/25/2007 to 5/08/2007
Evaluation Committee Meeting	5/08/2007
Post Intent to Negotiate	5/08/2007
Commence Negotiations	5/15/2007 to 6/18/2007
Evaluation Committee Meeting	6/18/2007
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SECTION 2.0
State of Florida
PUR 1001
General Instructions to Respondents

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1. Definitions. The definitions found in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

- (a) "Buyer" means the entity that has released the solicitation. The "Buyer" may also be the "Customer" as defined in the PUR 1000 if that entity meets the definition of both terms.
- (b) "Procurement Officer" means the Buyer's contracting personnel, as identified in the Introductory Materials.
- (c) "Respondent" means the entity that submits materials to the Buyer in accordance with these Instructions.
- (d) "Response" means the material submitted by the respondent in answering the solicitation.
- (e) "Timeline" means the list of critical dates and actions included in the Introductory Materials.

2. General Instructions. Potential respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly.

3. Electronic Submission of Responses. Respondents are required to submit responses electronically. For this purpose, all references herein to signatures, signing requirements, or other required acknowledgments hereby include electronic signature by means of clicking the "Submit Response" button (or other similar symbol or process) attached to or logically associated with the response created by the respondent within MyFloridaMarketPlace. The respondent agrees that the action of electronically submitting its response constitutes:

- an electronic signature on the response, generally,
- an electronic signature on any form or section specifically calling for a signature, and
- an affirmative agreement to any statement contained in the solicitation that requires a definite confirmation or acknowledgement.

4. Terms and Conditions. All responses are subject to the terms of the following sections of this solicitation, which, in case of conflict, shall have the order of precedence listed:

- Technical Specifications,
- Special Conditions and Instructions,
- Instructions to Respondents (PUR 1001),
- General Conditions (PUR 1000), and
- Introductory Materials.

The Buyer objects to and shall not consider any additional terms or conditions submitted by a respondent, including any appearing in documents attached as part of a respondent's response. In submitting its response, a respondent agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a response, shall be grounds for rejecting a response.

5. Questions. Respondents shall address all questions regarding this solicitation to the Procurement Officer. Questions must be submitted via the Q&A Board within MyFloridaMarketPlace and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline. Questions shall be answered in accordance with the Timeline. All questions submitted shall be published and answered in a manner that all respondents will be able to view. Respondents shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the MyFloridaMarketPlace site for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained within the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 19 of these Instructions.

6. Conflict of Interest. This solicitation is subject to chapter 112 of the Florida Statutes. Respondents shall disclose with their response the name of any officer, director, employee or other agent who is also an employee of the State. Respondents shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.

7. Convicted Vendors. A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list:

- submitting a bid on a contract to provide any goods or services to a public entity;

- submitting a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submitting bids on leases of real property to a public entity;
- being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and
- transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.

8. Discriminatory Vendors. An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not:

- submit a bid on a contract to provide any goods or services to a public entity;
- submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submit bids on leases of real property to a public entity;
- be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or
- transact business with any public entity.

9. Respondent's Representation and Authorization. In submitting a response, each respondent understands, represents, and acknowledges the following (if the respondent cannot so certify to any of following, the respondent shall submit with its response a written explanation of why it cannot do so).

- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.
- The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.
- The respondent has fully informed the Buyer in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- Neither the respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:

- Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
- Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The product offered by the respondent will conform to the specifications without exception.
- The respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.
- If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

10. Manufacturer's Name and Approved Equivalents. Unless otherwise specified, any manufacturers' names, trade names, brand names, information or catalog numbers listed in a specification are descriptive, not restrictive. With the Buyer's prior approval, the Contractor may provide any product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Buyer shall determine in its sole discretion whether a product is acceptable as an equivalent.

11. Performance Qualifications. The Buyer reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by Respondent meet the Contract requirements. Respondent shall at all times during the Contract term remain responsive and responsible. In determining Respondent's responsibility as a vendor, the agency shall consider all information or evidence which is gathered or comes to the attention of the agency which demonstrates the Respondent's capability to fully satisfy the requirements of the solicitation and the contract.

Respondent must be prepared, if requested by the Buyer, to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the respondent for the production, distribution, and servicing of the product bid. If the Buyer determines that the conditions of the solicitation documents are not complied with, or that the product proposed to be furnished does not meet the specified requirements, or that the qualifications, financial standing, or facilities are not satisfactory, or that performance is

untimely, the Buyer may reject the response or terminate the Contract. Respondent may be disqualified from receiving awards if respondent, or anyone in respondent's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts. This paragraph shall not mean or imply that it is obligatory upon the Buyer to make an investigation either before or after award of the Contract, but should the Buyer elect to do so, respondent is not relieved from fulfilling all Contract requirements.

12. Public Opening. Responses shall be opened on the date and at the location indicated on the Timeline. Respondents may, but are not required to, attend. The Buyer may choose not to announce prices or release other materials pursuant to s. 119.071(1)(b), Florida Statutes. Any person requiring a special accommodation because of a disability should contact the Procurement Officer at least five (5) workdays prior to the solicitation opening. If you are hearing or speech impaired, please contact the Buyer by using the Florida Relay Service at (800) 955-8771 (TDD).

13. Electronic Posting of Notice of Intended Award. Based on the evaluation, on the date indicated on the Timeline the Buyer shall electronically post a notice of intended award at http://fcfn.state.fl.us/owa_vbs/owa/vbs_main_menu. If the notice of award is delayed, in lieu of posting the notice of intended award the Buyer shall post a notice of the delay and a revised date for posting the notice of intended award. Any person who is adversely affected by the decision shall file with the Buyer a notice of protest within 72 hours after the electronic posting. The Buyer shall not provide tabulations or notices of award by telephone.

14. Firm Response. The Buyer may make an award within sixty (60) days after the date of the opening, during which period responses shall remain firm and shall not be withdrawn. If award is not made within sixty (60) days, the response shall remain firm until either the Buyer awards the Contract or the Buyer receives from the respondent written notice that the response is withdrawn. Any response that expresses a shorter duration may, in the Buyer's sole discretion, be accepted or rejected.

15. Clarifications/Revisions. Before award, the Buyer reserves the right to seek clarifications or request any information deemed necessary for proper evaluation of submissions from all respondents deemed eligible for Contract award. Failure to provide requested information may result in rejection of the response.

16. Minor Irregularities/Right to Reject. The Buyer reserves the right to accept or reject any and all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Buyer determines that doing so will serve the State's best interests. The Buyer may reject any response not submitted in the manner specified by the solicitation documents.

17. Contract Formation. The Buyer shall issue a notice of award, if any, to successful respondent(s), however, no contract shall be formed between respondent and the Buyer until the Buyer signs the Contract. The Buyer shall not be liable for any costs incurred by a respondent in preparing or producing its response or for any work performed before the Contract is effective.

18. Contract Overlap. Respondents shall identify any products covered by this solicitation that they are currently authorized to furnish under any state term contract. By entering into the Contract, a Contractor authorizes the Buyer to eliminate duplication between agreements in the manner the Buyer deems to be in its best interest.

19. Public Records. Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public record. As such, all responses to a competitive solicitation are public records unless exempt by law. Any respondent claiming that its response contains information that is exempt from the public records law shall clearly segregate and mark that information and provide the specific statutory citation for such exemption.

20. Protests. Any protest concerning this solicitation shall be made in accordance with sections 120.57(3) and 287.042(2) of the Florida Statutes and chapter 28-110 of the Florida Administrative Code. Questions to the Procurement Officer shall not constitute formal notice of a protest. It is the Buyer's intent to ensure that specifications are written to obtain the best value for the State and that specifications are written to ensure competitiveness, fairness, necessity and reasonableness in the solicitation process.

Section 120.57(3)(b), F.S. and Section 28-110.003, Fla. Admin. Code require that a notice of protest of the solicitation documents shall be made within seventy-two hours after the posting of the solicitation.

Section 120.57(3)(a), F.S. requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

Section 28-110.005, Fla. Admin. Code requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

21. Limitation on Vendor Contact with Agency During Solicitation Period. Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

SECTION 3.0

SPECIAL INSTRUCTIONS TO RESPONDENTS

SPECIAL INSTRUCTIONS TO RESPONDENTS CONTAINED IN THIS SECTION 3.0 MAY SUPERCEDE OR SUPPLEMENT GENERAL INSTRUCTIONS TO RESPONDENTS CONTAINED IN SECTION 2.0.

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- 3.13 STATE OBJECTIVES

3.1 Contact Person

Refer ALL Inquiries to:

David A. Bennett
Lead Purchasing Analyst, State Purchasing
Department of Management Services
4050 Esplanade Way, Suite 360
Tallahassee, FL 32399-0950
(850) 921-4072
(850) 488-5498 (facsimile)
David.Bennett@dms.Myflorida.com

3.2 Order of Precedence

Potential Respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly. In the event any conflict exists between the Special and General Instructions, those instructions specified in the Special Instructions shall prevail. After successful negotiations, Contractor(s) shall sign a Contract form incorporating the solicitation materials and any additional terms and conditions resulting from the negotiation process.

All responses are subject to the terms of the following sections of this ITN, which, in case of conflict, shall have the order of precedence listed:

- Technical Specifications
- Special Instructions to Respondents
- Special Conditions
- Forms, Attachments and Worksheets
- General Instruction to Respondents (PUR 1001)
- General Conditions (PUR 1000)

The Department will consider additional terms and conditions submitted by a Respondent that may be submitted as part of a Respondent's response. This willingness to consider additional terms and conditions takes precedence over the language contained in the General Instructions to Respondents (PUR 1001), Section 2.4. The Department's willingness to consider additional terms and conditions does not extend to the requirements listed in Section 3.9 which shall be considered non-negotiable.

Respondents shall submit any proposed additional terms and conditions in accordance with Section 3.7.

3.3 Definitions

3.3.1 The definitions found in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

3.3.2 "The Department" means the Department of Management Services.

3.3.3 "Procurement Officer" means the Buyer's contracting personnel, as identified in Section 3.1.

3.3.4 "Eligible Users" is defined in 60A-1.005, F.A.C. The following entities are eligible users:

1. All governmental agencies, as defined in Section 163.3164, F.S., which have a physical presence within the State of Florida;
2. Any independent, non-profit college or university that is located within the State of Florida and is accredited by the Southern Association of Colleges and Schools.

3.3.5 "Contractor" means any person who contracts to sell commodities or contractual services to an agency.

3.4 Who May Respond

Fully capable providers, who are in good standing with the State of Florida, meet the Technical Specifications (Section 6.0), and which possess the financial capability, experience and personnel resources to provide service of the scope and breadth described in this ITN.

The Department and Eligible Users retain the right to request additional information pertaining to the Respondent's ability and qualifications to accomplish all services described in this ITN as deemed necessary during the ITN or after contract award.

Companies, their subsidiaries, affiliates, or related entities shall be limited to one (1) response as a prime contractor. A company/firm may serve as a prime contractor on ONLY one response. A company may serve as a subcontractor on multiple responses.

3.5 MyFloridaMarketPlace ITN Overview

3.5.1 MyFloridaMarketPlace Sourcing Tool Tips

Vendors must have a current and complete Vendor Registration Application identified on the MyFloridaMarketPlace Vendor Registration System at: <https://vendor.myfloridamarketplace.com/>. If you have not registered, please be advised that a minimum of 48 hours will be required for access to the Sourcing Tool. Completion of this registration is mandatory for those Vendors who wish to submit a response.

3.5.2 Questions & Answers.

Respondents shall examine this solicitation to determine if the Department's requirements are clearly stated. If there are any requirements which are unclear or may restrict competition, Respondents should submit notice to the Department during Stage 1 using the Sourcing Tool's Q&A Board by due date for Respondents to

submit questions listed in the Event Calendar. Do not contact the Purchasing Analyst or Customers directly. Within the submitted question, Respondents must do the following:

1. Identify and describe in detail their difficulty in meeting the Department's specifications
2. Provide detailed justification for a change
3. Provide recommended changes to the specifications

A Respondent's failure to request changes by the date described in the Introduction (Section 1) of this solicitation shall be considered to constitute Respondent's acceptance of the Department's specifications. The Department shall determine what changes to the solicitation shall be acceptable to the Department, if any. If required, the Department shall issue an addendum reflecting the acceptable changes to this solicitation, which shall be posted as an addendum to the solicitation in the Sourcing tool and on the State's Vendor Bid System in order that all Respondents shall be given the opportunity of submitting responses to the same specifications.

Please note that questions will NOT be answered via telephone or fax. The Department shall post the answers to the questions via the System by the date stated on the Event Calendar. Each Respondent is responsible for monitoring the System for new or changing information. New communications will be posted within the Message Center on the System. The Department shall not be bound by any verbal information or by any written information that is not either contained within the solicitation documents or formally noticed and issued by the Purchasing Analyst. Questions shall not constitute formal protest of the specifications or of the solicitation. The formal protest process is described in PUR Form 1001 (Section 19) of this solicitation.

3.5.3 MyFloridaMarketPlace Sourcing Will NOT be used to Submit Respondent's Reply

Five hard copies and one CD of the Respondent's reply to this ITN shall be submitted to and received by the Official Contact Person specified in Section 3.1 (or his designee) by the deadline specified in Section 1.2. DO NOT submit your response electronically through MFMP.

This Section, 3.5.3, supersedes and replaces Section 2.3, of this Solicitation.

3.5.4 MyFloridaMarketPlace Email Notification

Respondents are reminded that the Sourcing Tool's Email Notifications are an option provided as a courtesy. The State of Florida is not under any obligation and does not guarantee that Vendors will receive Email Notifications concerning the posting, amendment or close of solicitations. Vendors are responsible for checking the MyFloridaMarketPlace Sourcing Tool and / or the Vendor Bid System for information and updates concerning solicitations.

3.5.5 MyFloridaMarketPlace Sourcing Tool Training

This solicitation will be conducted using the MyFloridaMarketPlace Sourcing Tool. Optional training is offered at:

http://marketplace.myflorida.com/vendor/vendor_solicitation_help.htm.

Download and review the document titled "ITB Event User Guide."

- For all technical questions about the Sourcing Tool, Vendors should contact the MyFloridaMarketPlace Customer Service Desk at 866-FLA-EPRO (866-352-3776) or: vendorhelp@myfloridamarketplace.com.
- For additional information or assistance on using the Sourcing Tool, please visit the MyFloridaMarketPlace website at the following link: http://marketplace.myflorida.com/vendor/vendor_solicitation_help.htm.

This site includes:

- a. Solicitation User Guides
- b. On Demand web-based Sourcing training link
- c. WinZip FAQs
- d. Vendor FAQs

3.6 Amendments to the ITN Documents

The Department reserves the right to issue amendments to the ITN. Notice of any amendment will be posted within MyFloridaMarketPlace and/or the Vendor Bid System. Such notice, if required, will contain the appropriate details for identifying and/or reviewing the formal changes to the ITN. Each Respondent is responsible for monitoring the sites for new or changing information concerning this ITN.

3.7 Submittal of Response

Five Hard copies and one CD of the Respondent's reply to this ITN shall be received by the Official Contact Person specified in Section 3.1 (or his designee) by the deadline specified in Section 1.2. DO NOT submit your response electronically through MFMP.

The outer packaging of mailed documents shall clearly state: Solicitation Title and Number (STATE TERM CONTRACT FOR ENERGY SAVINGS, ITN No. 24-973-320-x) and the ITN Responses Due Date and Time from the Timeline in Section 1.2 of this solicitation. Failure to provide all required information within the solicitation response may result in rejection of the response.

Each Respondent is responsible for ensuring that the offer is received before the deadline noted on the Timeline in Section 1.2 of this solicitation. The Department shall not consider offers received after the due date and time specified in the Timeline (Section 1.2) or as amended by the Department.

3.8 Evaluation and Selection Process

In determining whether to select or reject a response, the Department will consider and balance all information submitted in response to this ITN. Responses that do not contain all the required information may be considered non-responsive and may be rejected. In its assessment of submitted responses, the Department will analyze the information submitted in relation to the information requirements and evaluation criteria of this ITN, the applicable provisions of Florida Statutes, and Florida Administrative Code. Respondents must meet or exceed the requirements outlined in Section 3.12.

3.9 Reservations.

The Department reserves the right to reject any and all Responses received pursuant to this Invitation to Negotiate, if the Department determines such action is in the best interest of the State of Florida or the Department. The Department reserves the right to negotiate concurrently or separately with competing Respondents. The Department reserves the right to accept portions of a competing Respondent's Responses and merge such portions into one project, including the inclusion of the entity offering such portions. The Department reserves the right to waive minor irregularities in submitted Responses.

3.10 Oral Presentation.

The Department reserves the right to require any Respondent to perform, prior to the selection of Respondent(s), an operational demonstration and, an oral presentation on any hardware, software or professional services included in its Response. If the Department determines that an operational demonstration and oral presentation are necessary, the Department shall schedule the presentation.

A written summary of the operational demonstration and oral presentation prepared by the Respondent shall be regarded as confirmation of this requirement and shall become part of the Respondent's response. A list of attendees and copies of the agenda and all visuals should accompany the written summary. The inability of the Respondent to conduct the operational demonstration and oral presentation within ten (10) days of written notification by the Department will result in disqualification. The Respondent(s) project manager(s) assigned to this Response must be present at the operational demonstration and oral presentation.

3.11 Disclosure of Response Contents.

All documentation produced as part of the Invitation to Negotiate will become the exclusive property of the Department and may not be removed by an employee or agent of the Respondent. All Responses received from Respondents in response to this Invitation to Negotiate will become the property of the Department and will not be returned to the Respondent. The Department shall have the right to use any or all ideas or adaptations of the ideas presented in any Response received in response to this Invitation to Negotiate. Selection or rejection of a Response will not affect this right. For additional information regarding public records, please refer to Section 2.19 of this solicitation.

3.12 Respondent's Business Information and Experience

3.12.1 Please, provide the following information regarding the Respondent's business:

- A. Full, legal name of prime Respondent;
- B. Federal Identification Number;
- C. Unemployment Compensation Number;
- D. State in which incorporated, and if not incorporated, indicate type of business (e.g., partnership, sole proprietorship, etc.);
- E. Date incorporated;
- F. Description of the Respondent's organization, including subsidiaries, parent corporations, officers; include organization charts and details concerning the number of facilities by geographic location;
- G. Brief description of the Respondent's principal type of business;
- H. Percentage of minority employees;
- I. State whether the Respondent has had a contract terminated for default within the past five years, and if so, describe in detail;
- J. State whether the Respondent has filed for bankruptcy protection in the past five (5) years, or is currently in the process of filing or planning to file for bankruptcy protection or financial restructuring or refinancing. If so provide Court and case number;
- K. Describe in detail a plan to provide continued service and support to the Department in the event the Respondent's company goes out of business, merges with another company, is acquired by another company, etc.;
- L. Certify that the Respondent is not currently under suspension or debarment by the Federal government, the State of Florida, or any other state government;
- M. Certify that the Respondent does not owe the Federal government, the State of Florida, or another state any outstanding taxes or fees;
- N. State whether any contract with the State, or negotiation with any other clients, would represent a possible conflict of interest;
- O. Indicate whether the Respondent has any pending or threatened litigation against the State or any agency of the State;
- P. If the Respondent is proposing to use any sub-contractors for the project, describe in detail the experience as a prime Respondent in dealing with sub-contractors, and how the plan to manage and coordinate any proposed sub-contractors;
- Q. Provide the names and addresses of all affiliated or related companies, partnerships or associations (including sub-contractor, if any) and a brief description of their relationship to the Respondent;
- R. Document the Respondent's insurability and ability to obtain bonding as required by the State;

- S. Provide a statement on the Respondent's letterhead that the Respondent agrees to comply with all Federal and state laws regarding fair employment practices and non-discrimination.

3.12.2 Evaluation Criteria for Stage 1 (Pre-Negotiation).

Respondent's will be awarded a Pass or Fail grade for each of the 3 criterion below and will only be considered for an award of the subsequent contract if a Passing grade is received for each criterion.

1. Please provide the following information regarding the Respondent's history and experience:

Please provide a summary of all projects as defined within F.S. 489.145 that your business has contracted for with any government entity during the last five years. The summary should be brief (approximately 2 pages) and include but not be limited to a description of the project, outcome, referral/contact information, and dollar amount. In order to receive a Passing grade, the Respondent must have five or more projects under contract with government entities with an aggregate amount of \$10 million or more over the last THREE years.

2. Respondent's License:

The Respondent must provide a copy of a license under F.S. 471, F.S. 481, or F.S. 489, and demonstrate that they are experienced in the analysis, design, implementation, or installation of energy conservation measures through energy performance contracts.

3. Respondent's Financial Capability–

The Respondent must provide information demonstrating its Financial Capability and resources available to satisfy the requirements proposed within this ITN.

3.12.3 Evaluation Criteria for Stage 2 (Negotiation and Award).

Evaluation Criteria for Stage 2 will be provided prior to Stage 2.

3.13 State Objectives (rev. 07/28/04)

Within thirty (30) calendar days following award of the Contract, the successful Respondent shall submit plans addressing each of the State's five (5) objectives listed below, to the extent applicable to the items / services covered by this solicitation.

3.13.1 Environmental Considerations

The State supports and encourages initiatives to protect and preserve our environment. The Contractor shall submit as part of any response the Contractor's plan to support the procurement of products and materials with recycled content, and the intent of Section 287.045, Florida Statutes. The Contractor shall also provide a plan for reducing and or handling of any hazardous waste generated by Contractor's company. Reference Rule 62-730.160, Florida Administrative Code. It is a requirement of the Florida Department of Environmental Protection that a generator of hazardous waste materials that exceeds a certain threshold must have a valid and current Hazardous Waste Generator Identification Number. This identification number shall be submitted as part of Contractor's explanation of its company's hazardous waste plan and shall explain in detail its handling and disposal of this waste.

3.13.2 Certification of Drug-Free Workplace Program

The State supports and encourages initiatives to keep the workplaces of Florida's Suppliers and Contractors drug free. Section 287.087 of the Florida Statutes provides that, where identical tie responses are received, preference shall be given to a response received from a Respondent that certifies it has implemented a drug-free workforce program. The Contractor shall describe how it will address the implementation of a drug free workplace in offering the items of the solicitation.

3.13.3 Products Available from the Blind or Other Handicapped (RESPECT)

The State supports and encourages the gainful employment of citizens with disabilities. It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this Contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this Contract the person, firm, or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for the state agency insofar as dealings with such qualified nonprofit agency are concerned. Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

The Contractor shall describe how it will address the use of RESPECT in offering the items of the solicitation.

3.13.4 Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE)

The State supports and encourages the use of Florida correctional work programs. It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this Contract shall be purchased from the corporation identified

under Chapter 946, F.S., in the same manner and under the same procedures set forth in Section 946.515(2), and (4), F.S.; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for this agency insofar as dealings with such corporation are concerned. Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

The Contractor shall describe how it will address the use of PRIDE in offering the items of the solicitation.

SECTION 4.0

State of Florida PUR 1000 General Contract Conditions

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1. Definitions. The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

(a) “Contract” means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.

(b) “Customer” means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The “Customer” may also be the “Buyer” as defined in the PUR 1001 if it meets the definition of both terms.

(c) “Product” means any deliverable under the Contract, which may include commodities, services, technology or software.

(d) “Purchase order” means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

2. Purchase Orders. In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor’s order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.

3. Product Version. Purchase orders shall be deemed to reference a manufacturer’s most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

4. Price Changes Applicable only to Term Contracts. If this is a term contract for commodities or services, the following provisions apply.

(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

(b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the

Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.

(c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.

(d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

(e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

5. Additional Quantities. For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.

6. Packaging. Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

7. Inspection at Contractor's Site. The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

8. Safety Standards. All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and

the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

9. Americans with Disabilities Act. Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

10. Literature. Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

11. Transportation and Delivery. Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.

12. Installation. Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

13. Risk of Loss. Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

14. Transaction Fee. The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

15. Invoicing and Payment. Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms - EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.

16. Taxes. The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

17. Governmental Restrictions. If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

18. Lobbying and Integrity. Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with

the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dhis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

19. Indemnification. The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

20. Limitation of Liability. For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

21. Suspension of Work. The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

22. Termination for Convenience. The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

23. Termination for Cause. The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was

excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

24. Force Majeure, Notice of Delay, and No Damages for Delay. The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

25. Changes. The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.

26. Renewal. Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

27. Purchase Order Duration. Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in

accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.

Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.

Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.

The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.

Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.

Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.

28. Advertising. Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

29. Assignment. The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.

30. Antitrust Assignment. The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

31. Dispute Resolution. Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

32. Employees, Subcontractors, and Agents. All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

33. Security and Confidentiality. The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

34. Contractor Employees, Subcontractors, and Other Agents. The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to,

ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

35. Insurance Requirements. During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

36. Warranty of Authority. Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

37. Warranty of Ability to Perform. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

38. Notices. All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

39. Leases and Installment Purchases. Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

41. Products Available from the Blind or Other Handicapped. Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the

person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

42. Modification of Terms. The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

43. Cooperative Purchasing. Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser.

State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

44. Waiver. The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

45. Annual Appropriations. The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.

46. Execution in Counterparts. The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

47. Severability. If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

SECTION 5.0
SPECIAL CONTRACT CONDITIONS

CONTENT

- 5.1 Definitions
- 5.2 Period of Agreement
- 5.3 Vendor Additions and Deletions
- 5.4 Contract Sales Summary

5.1 Definitions

In case of conflict with Section 4.0 General Contract Conditions, the definitions in section 489.145 Florida Statutes and rules and definitions contained in s. 60A-1.001, F.A.C shall apply to this agreement.

5.2 Period of Agreement

This agreement shall be in effect from the start date of the Contract for an initial period of Sixty (60) months, with an option to renew for an additional 60 month period. Renewal is contingent upon satisfactory performance by the Contractor.

5.3 Vendor Additions and Deletions

On an annual basis and at the discretion of the Department, vendors may be removed or added the contract resulting from this ITN. All decisions to add a vendor will be made using the same criteria in Section 3.9 of this ITN.

5.4 Contract Sales Summary

Contract Sales Summary: The Contractor is required to provide annual fiscal year Contract Sales Summaries to the Purchasing Analyst within fifteen (15) days after the end of each fiscal year during the term of the Contract. The fiscal year is a twelve (12) month period beginning July 1 and ending on June 30 of each year. Contract Sales Summaries shall document all orders completed, for which payment was received, during the specified fiscal year. The Report shall specifically document the quantity and total price by both Commodity and product sold differentiating between State Agencies & Political Subdivisions.

The Contractor is also required to provide partial year Contract Sales Summaries under the same terms as the annual summaries for portions of the Contract term that occur outside a complete fiscal year. These partial summaries will be due July 15, 2007 for the period beginning on the Contract start date and ending June 30, 2007, and within fifteen (15) days after the end of the Contract for the period beginning July 1 of the Contract's final year and ending on the Contract termination date. The Department may require additional Contract Sales Summaries for various periods of time; these specific summaries shall be submitted by the Contractor within twenty (20) days of notification.

Initiation and submission of the Contract Sales Summaries are to be the responsibility of the Contractor without prompting or notification by the Purchasing Analyst. The Contractor will submit the completed Contract Sales Summary forms by email to the Purchasing Analyst. The Department shall distribute, in electronic format, the Contract Sales Summary forms to be used by the awarded Contractor upon Contract signature.

SECTION 6.0
TECHNICAL SPECIFICATIONS

CONTENT

- 6.1 DEFINITIONS
- 6.2 PURPOSE
- 6.3 GENERAL TECHNICAL REQUIREMENTS

6.1 Definitions

The definitions found in section 489.145 Florida Statutes and section 60A-1.001, F.A.C. shall apply to this ITN.

6.2 Purpose

The primary purpose of this ITN is to create a list of qualified Contractors to perform work for agencies of the State of Florida, and for other eligible users of state term contracts (collectively, "Eligible Users"), under the Guaranteed Energy Performance Savings Contract Act, codified in section 489.145 of the Florida Statutes. Users of the contract derived from this ITN must comply with the requirements in section 489.145 of the Florida Statutes which includes that a Guaranteed Energy Performance Savings Contractor must be selected in compliance with section 287.055 of the Florida Statutes.

6.3 General Technical Requirements

Pursuant to section 489.145(6) of the Florida Statutes, the Chief Financial Officer has developed model agreements and related forms that affected State agencies shall use, and others may use, to execute a purchase under this Contract (electronic copies of the model agreements are available at the Chief Financial Officer's web page devoted to this project, which is currently www.fldfs.com/aadir/cefp. An Agency Contract executed under this State Term Contract shall survive expiration of the State Term Contract in accordance with the agreement's terms.

At the Chief Financial Officer's web page devoted to this project, Eligible Users and Respondent's will find an Energy Savings Model Contract that addresses design and installation of energy conservation measures and an Energy Savings Financing Agreement. Also, at [Model Audit Agreement Website](#) Eligible Users and Contractor will find a Model Audit Agreement they may use to procure the report required by subsection 489.145(4)(b) of the Florida Statutes. Any questions regarding the Model Audit Agreement should be addressed to the attention of Dan Hedrick Daniel.Hedrick@dms.Myflorida.com, phone (850) 413-9515.

Prior to entering into any agreement to effect a purchase under this Contract, including any financing agreement, state agencies shall submit the proposed agreement to the Chief Financial Officer for review and approval. Currently, all such agreements should be addressed to the attention of Roy Jeter Roy.Jeter@fldfs.com, phone (850) 413-5363.

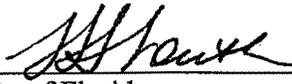
CONTRACT

This Contract is by and between the State of Florida, Department of Management Services ("Department"), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and the entity identified below as Contractor ("Contractor").

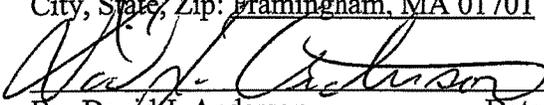
The Contractor responded to the Department's Invitation to Negotiate (ITN) No. 24-973-320-X, Energy Savings. The Department has determined to accept the Contractor's response and to enter into this Contract in accordance with the terms and conditions of the solicitation.

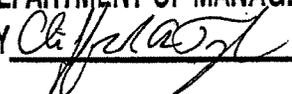
Accordingly, and in consideration of the mutual promises contained in the Contract documents, the Department and the Contractor do hereby enter into this Contract, which is a state term contract authorized by section 287.042(2)(a) of the Florida Statutes (2001). The term of the Contract begins on January 1, 2008, and expires on December 31, 2012. The Contract consists of the following documents, which, in case of conflict, shall have priority in the order listed, and which are hereby incorporated as if fully set forth:

- Any written amendments to the Contract
- Technical Specifications
- Special Conditions
- Special Instructions to Respondents
- General Instructions to Respondents [PUR1001 (10/06)]
- General Contract Conditions [PUR1000 (10/06)]
- Any Purchase Order under the Contract
- Contractor's response

 _____ 12/20/07
State of Florida, Date
Department of Management Services
By: Linda H. South, Secretary

Contractor Name: Ameresco, Inc. (Seal)
Street Address or P.O. Box: 111 Speen Street
City, State, Zip: Framingham, MA 01701

 _____
By: David J. Anderson Date: December 12, 2007
Its: Executive Vice President

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE GENERAL COUNSEL
DEPARTMENT OF MANAGEMENT SERVICES
BY  _____

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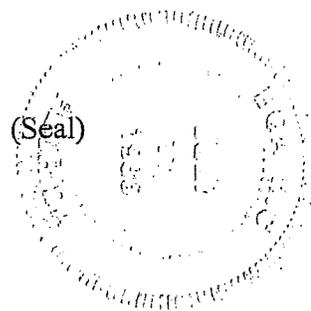
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- Contractor's response

Linda H. South 12/20/07
State of Florida, Date
Department of Management Services
By: Linda H. South, Secretary

Contractor Name: BGA, Inc.
Street Address or P.O. Box: 3101 W. MLK Jr. Blvd., Ste. 110
City, State, Zip: Tampa, FL 33607

Michael W. Gibson 12-11-07
By: Michael W. Gibson Date
Its: President



APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE GENERAL COUNSEL
DEPARTMENT OF MANAGEMENT SERVICES
BY *Clifford A. [Signature]*

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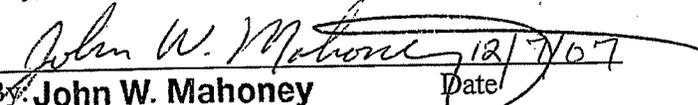
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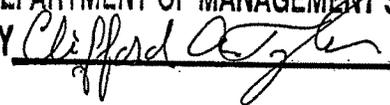
 12/20/07

State of Florida, Date
Department of Management Services
By: Linda H. South, Secretary

Contractor Name: **Chevron Energy Solutions Company, a division of Chevron U.S.A. Inc.**
Street Address or P.O. Box: 12980 Foster, 4th Floor
City, State, Zip: Overland Park, Kansas 66213-2649

DDG  12/7/07
By: **John W. Mahoney** Date
Its:

Chief Operating Officer

**APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE GENERAL COUNSEL
DEPARTMENT OF MANAGEMENT SERVICES
BY **

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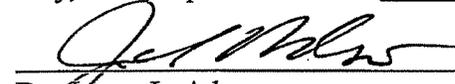
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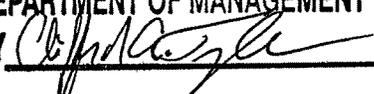
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- Contractor's response

 12/20/07
State of Florida, Date:
Department of Management Services
By: Linda H. South, Secretary

Contractor Name: Energy Systems Group, LLC (Seal)
Street Address or P.O. Box: 17757 U.S. Highway 19 North, Suite 210
City, State, Zip: Clearwater, FL 33764-6592


By: James L. Adams Date: December 12, 2007
His: President

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE GENERAL COUNSEL
DEPARTMENT OF MANAGEMENT SERVICES
BY 

CONTRACT

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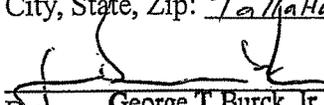
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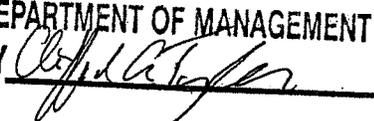
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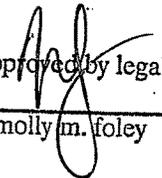
 12/20/07
State of Florida, Date
Department of Management Services
By: Linda H. South, Secretary

Contractor Name: Siemens Building Technologies, Inc. (Seal)
Street Address or P.O. Box: 119-6 Hamilton Park Dr.
City, State, Zip: Tallahassee, FL 32304


By: George T. Burck, Jr. Date 12/12/07
Its: Director, Accounting
Governance & Compliance

NAME: 
TITLE: Noe G. Bermudez
Assistant Secretary
DATE: 12-12-07

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE GENERAL COUNSEL
DEPARTMENT OF MANAGEMENT SERVICES
BY 

approved by legal

molly m. foley

